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OF THE
UNITED STATES OF AMERICA

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April 13, 2009

The Honorable Gary Locke
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

The Honorable Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

The Honorable Anna Gomez
Acting Assistant Secretary for
Communications and Information
National Telecommunications and
Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: National Telecommunications and Information Administration/Rural Utilities Service Joint Request for Information on Implementing the American Recovery and Reinvestment Act, Docket No. 090309298-9299-01, and the Federal Communications Commission's Consultative Role in the Broadband Provisions of the Recovery Act, GN Docket No. 09-40

Dear Secretary Locke, Secretary Vilsack, Assistant Secretary Gomez, and Ms. Dortch:

The U.S. Chamber of Commerce ("U.S. Chamber"), the world's largest business federation, representing more than three million businesses and organizations of every size, sector and region, respectfully submits these comments in response to the Joint Request for Information from the National Telecommunications Information Administration ("NTIA") and Rural Utilities Service ("RUS")¹ on the broadband-related provisions in the American Recovery and Reinvestment Act of 2009 ("Recovery Act"),² and to the Federal Communications Commission's ("Commission") request for comments³ on its consultative role in helping to implement these provisions.

¹ *American Recovery and Reinvestment Act of 2009 Broadband Initiatives, Joint Request for Information and Notice of Public Meetings*, 47 Fed. Reg. 10716 (Mar. 12, 2009) ("Joint Request").

² *American Recovery and Reinvestment Act of 2009*, Pub. L. No. 111-5, 123 Stat. 115 (2009) ("Recovery Act").

The purpose of the Recovery Act is clear: stimulate spending, job creation, and economic growth. The U.S. Chamber urges NTIA, RUS, and the FCC to spur broadband deployment in unserved areas using the most transparent process possible, improve broadband adoption, and refrain from over-regulation.

I. Introduction

The U.S. Chamber views telecommunications as the central nervous system of the U.S. economy. In particular, broadband applications and services have the power to transform the American economy by spurring investment and innovation in e-commerce, education, healthcare, communications, entertainment, government, and almost every other activity of the nation's economy. For example, a broadband connection allows businesses, regardless of size or location, to sell to customers around the country and the world.

Phone companies, cable operators, wireless carriers, and companies from other sectors are investing hundreds of billions of dollars into broadband infrastructure. Nevertheless, there are still parts of the country where people and businesses do not have access to broadband or its related applications and services. By including \$7.2 billion in the Recovery Act for broadband deployment and adoption, Congress and the Administration recognized the ability of broadband to stimulate job creation and economic development. Included in this amount is funding for NTIA's Broadband Technology Opportunities Program (BTOP), which will provide funding for various broadband initiatives.

II. The First Priority of the Broadband Funding in the Recovery Act Should be to Support the Deployment of Broadband to Unserved Areas

Broadband is available to the vast majority of Americans. However, approximately nine to ten million households lack access to this technology, and many of these households are located in rural areas.⁴ 19% of rural residents say they do not subscribe to broadband because service is not available in their area, according to an October 2008 study by Connected Nation.⁵ Other studies report similar findings. 15% of Internet dial-up users in rural America cite lack of availability as the reason for not signing up for broadband service, according to a recent study by the Pew Internet & American Life Project.⁶

³ Public Notice of Comment Procedures Regarding the Commission's Consultative Role in the Broadband Provisions of the Recovery Act, GN Docket No. 09-40, DA 09-668 (rel. Mar. 24, 2009) ("Notice").

⁴ Jon M. Peha, *Bringing Broadband to Unserved Communities*, The Hamilton Project (The Brookings Institution) (July 2008), at 11-12. Available at: http://www.brookings.edu/~media/Files/rc/papers/2008/07_broadband_peha/07_broadband_peha.pdf.

⁵ "Consumer Insights into America's Broadband Challenge," *Connected Nation Policy Brief*. (Oct. 13, 2008). Available at: http://www.connectednation.org/documents/ConsumerInsightsBroadbandChallenge_20081013.pdf.

⁶ John B. Horrigan, *Home Broadband Adoption 2008*, Pew Internet American Life Project. (July 2, 2008). Available at: <http://pewresearch.org/pubs/888/home-broadband-adoption-2008>.

A. NTIA Should Fund Broadband Efforts that Support and Advance, not Supplant, Public-Private Partnerships

The Recovery Act provides \$350 million to fully fund the Broadband Data Improvement Act of 2008 (BDIA).⁷ Section 106 of the BDIA authorizes the Secretary of Commerce to fund state-based initiatives, including public-private partnerships, to identify and track the availability and adoption of broadband services.

Connected Nation, a non-profit that seeks to improve broadband deployment and adoption across the United States, is an excellent example of a public-private partnership that has already proven successful in several states. Connected Nation has also garnered widespread praise for its state-level broadband mapping projects. Impressed by these results, the U.S. Chamber has partnered with Connected Nation and joined Connected Nation's National Advisory Council.

B. The Funding for the Broadband Mapping Under the BDIA Should be Rapidly Distributed

A problem cannot be addressed until the scope of the problem is ascertained. Thus, broadband mapping is the essential first step because it helps policymakers, industry, and the public identify gaps in broadband penetration. The U.S. Chamber commends Connected Nation for making its maps and other analyses publicly available and supports the use of non-disclosure agreements to collect the relevant data.

The U.S. Chamber urges NTIA to rapidly distribute the funding included in the Recovery Act to implement the BDIA and its broadband mapping provisions. If possible, all 50 states should be mapped by the fourth quarter of 2009. If these types of comprehensive state maps are not yet available when the grant applications are being processed, then other objective, quantifiable, and verifiable criteria must be used.

C. Unserved Areas Should Receive Priority Over Underserved Areas for Broadband Grants

The cost of providing broadband service to rural areas can be prohibitively high. Therefore, the NTIA and RUS should be careful to ensure that the government does not force private-sector companies that have risked their own capital to compete with government-subsidized entities. Also, some rural markets may not be capable of sustaining multiple competitors. In a worst case scenario, both the incumbent and the competitor may fail causing shareholder value to be harmed and public funds to be wasted.

⁷ Broadband Data Improvement Act of 2008, Pub. L. 110-385, 122 Stat. 1400 (2008) ("BDIA").

The 2005 report prepared by the Inspector General's Office at the U.S. Department of Agriculture on the RUS' Broadband Grant and Loan Programs poses three questions that also should be asked by NTIA and RUS as they prepare to distribute grants under the Recovery Act.⁸

- 1) Can the sparsely populated rural areas for which these loans [or grants, in the case of the Recovery Act] are intended reasonably support multiple broadband service providers?
- 2) What is the Government's responsibility if, due to subsidized competition, a preexisting, unsubsidized broadband provider goes out of business?
- 3) From the perspective of equity, why should the Government subsidize some providers in a given market and not others?

D. BTOP Grants Should be Made on a Technology-Neutral Basis to the Entity Best Able to Provide the Service

Given that different technologies might be appropriate in different areas of the country depending on geography, topography, and population density, all broadband-capable technologies (wireline, wireless, satellite, etc.) should be eligible for broadband funding from NTIA and RUS.

To minimize fraud, waste, and abuse and to maximize the impact of these funds, NTIA and RUS should ensure that:

- 1) The applicant has a successful track record;
- 2) The applicant has a solid business plan;
- 3) The applicant is using the technology most suitable to the service area;
- 4) The project can be completed in a timely, efficient manner that creates jobs, but is still cost-effective; and
- 5) The project is sustainable on an on-going basis after the distribution of the broadband funds from the Recovery Act.

E. Broadband Grants Should Be Issued in a Transparent Manner and in Coordination with Other Federal Agencies

Successful implementation of the broadband funding provisions in the Recovery Act hinges on transparency and effective program management.

⁸ Office of the Inspector General, Southwest Region, U.S. Dept. of Agriculture, *Audit Report on the Rural Utilities Service Broadband Grant and Loan Programs*, 09601-4-Te, p. 16. (September 2005). ("IG Report").

Once completed, state broadband maps should be posted on the Web and updated on a regular basis.

Applicants should be required to disclose, among other things: the applicant's name and address, the size of the grant requested, funding sources including other government programs, a geographic description of the area sought to be served, a description of the services sought to be offered, a time frame for completion, whether the proposed service is unserved based on FCC Form 477 data or completed state broadband maps, and an analysis of the unserved population and area that would gain broadband access at the completion of the project.

The applications and any modifications should be posted online. A notice-and-comment period should be established to allow interested parties to buttress or refute facts in the applications. Additionally, grant recipients should be required to file progress updates, which will then be posted online by the appropriate agencies.

Not only must the FCC, NTIA, and RUS coordinate their efforts, but the U.S. Chamber also recommends that they consult with all of the federal departments and agencies (e.g., the Department of Health and Human Services, the Department of Education, and the Department of Energy) that have broadband-related programs contained in the Recovery Act.

F. NTIA Should Reject Calls to Impose Non-Discrimination and Network Interconnection Obligations on Grant Recipients Beyond Compliance with the Commission's Broadband Policy Statement

The Recovery Act requires that NTIA shall, in coordination with the FCC, publish non-discrimination and network interconnections that shall be imposed on NTIA BTOP grant recipients. These obligations shall, at minimum, include adherence with the FCC's 2005 Broadband Policy Statement.⁹

This provision of the Recovery Act should be deemed met by compliance with the FCC's Broadband Policy Statement. The plain language of the Recovery Act supports this interpretation.

Moreover, it is important to note that the FCC's Broadband Policy Statement was specifically designed to cover wireline broadband and was never intended to be applied to wireless broadband providers. Wireless networks have certain unique technical limitations that are not inherent in wireline networks.

⁹ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Policy Statement, 20 FCC Rcd 14986 (2005) ("Policy Statement"). The Policy Statement, in summary, is a series of four principles stating that consumers are entitled to: 1) access their choice of lawful Internet content, 2) use applications or services of their choice, 3) connect their choice of legal devices that do not harm the network, and 4) competition among network providers, application and service providers, and content providers.

III. The Second Priority of Broadband Funding in the Recovery Act Should be to Support Programs Addressing Low Broadband Adoption Rates Where Broadband is Available

While over 90% of U.S. households have access to broadband, broadband subscribership is hovering slightly above 50%.¹⁰ According to the Pew study, 38% of those living in rural America now have broadband at home, compared with 31% in 2007.¹¹ This represents a growth rate of 23%. Despite the significant progress, rural America is still lagging behind other areas of the country. 57% of urban residents and 60% of suburban residents have broadband at home, according to this same report.¹²

Lack of awareness of the benefits of broadband represents the largest barrier to broadband adoption. According to Connected Nation, nearly one-half (44%) of those with no home broadband connection say “I don’t need broadband.”¹³ Approximately 40% of parents report no need for having a computer in the home, and nearly one-third (30%) of parents who do not have a home broadband connection say they see no need for a broadband connection.¹⁴ In rural areas, the numbers are even more troubling. Approximately 42% of rural residents without a home broadband connection say it is because they do not need broadband.¹⁵

A. NTIA Should Supplement the \$250 Million Allocated for Broadband Adoption Programs With Additional Broadband Funding Provided in the Recovery Act

Of the \$4.35 billion in funding given to NTIA for the BTOP, the Recovery Act states that “not less than” \$250 million shall be available for competitive grants for innovative programs to encourage sustainable adoption of broadband service. The U.S. Chamber strongly supports this provision and urges NTIA to consider the \$250 million in funding as a floor. Using the “not less than” language as its authority, NTIA should allocate additional funds from the BTOP to fund the broadband adoption initiatives.

¹⁰ *Connected Nation Policy Brief*.

¹¹ John B. Horrigan, *Home Broadband Adoption 2008*, Pew Internet American Life Project (July 2, 2008). Available at: <http://pewresearch.org/pubs/888/home-broadband-adoption-2008>.

¹² *Id.*

¹³ *Connected Nation Policy Brief*.

¹⁴ *Id.*

¹⁵ *Id.*

B. NTIA Should Supplement the \$200 Million Allocated for the Public Computing Program With Additional Broadband Funding Provided in the Recovery Act

Community colleges, libraries, and other public computing centers serve a vital role, especially for those who cannot afford computers or broadband, because jobs, education, and information in the 21st century are all tied to access to technology. More than 70% of those who use library computers say it's their primary source for connecting to the Internet, according to the Bill and Melinda Gates Foundation.¹⁶

Of the \$4.35 billion in funding given to NTIA for the BTOP, the Recovery Act states that "not less than" \$200 million shall be available for competitive grants for expanding public computer center capacity, including at community colleges and public libraries. The U.S. Chamber strongly supports this provision and urges NTIA to consider the \$200 million in funding as a floor. Using the "not less than" language as its authority, NTIA should allocate additional funds from the BTOP to fund the Public Computing Program.

C. NTIA Should Use the BDIA and Public-Private Partnerships to Leverage Resources at the Local and State Level

The relatively small amount of funding for broadband adoption and the public computing program means that NTIA will be faced with the challenge of ensuring the money goes toward projects that bring about the greatest economic impact. Fortunately, the Recovery Act funds the BDIA with \$350 million, and as a result, states now have a clear vehicle to use for developing statewide public-private partnerships that leverage resources within and across every community for effective technology expansion.

While this \$350 million pool of federal funds is often referred as "\$350 million for mapping," it is important to note that this \$350 million is not just for mapping. The funds are for statewide programs designed to stimulate sustainable broadband adoption at the local level.

Funding Connected Nation and similar groups is consistent with the Congressional intent of the BDIA to "achieve improved technology literacy, increased computer ownership, and broadband use among such citizens and businesses" and "to establish and empower local grassroots technology teams in each State to plan for improved technology use across multiple community sectors."¹⁷

To foster broadband adoption at the local level, Connected Nation creates sustainable grassroots networks called "eCommunity Leadership Teams" that involve

¹⁶ "Libraries – Bill and Melinda Gates Foundation," gatesfoundation.org. Available at: <http://www.gatesfoundation.org/topics/Pages/libraries.aspx> (last accessed Apr. 13, 2009).

¹⁷ BDIA, §§106 (a)(2-3).

community leaders that include local government, education, healthcare, businesses, government, libraries, agriculture, tourism, and other community organizations.¹⁸ These efforts have worked. For example, the Connected Tennessee initiative resulted in a 26% increase in broadband adoption compared to an estimated 15% growth nationally.¹⁹

IV. Conclusion

The U.S. Chamber urges NTIA, RUS, and the FCC to adopt rules implementing the broadband provisions in the Recovery Act that will create jobs, stimulate economic development, spur broadband deployment and adoption, foster increased private-sector investment in broadband infrastructure, and support public-private partnerships.

Sincerely,



William L. Kovacs

¹⁸ Comments of Connected Nation, *In the Matter of Request for Comments on FCC Report on Rural Broadband Strategy*, GN Docket No. 90-29. Available at: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520203594.

¹⁹ Prepared Testimony of Connected Nation Chairman and CEO Brian R. Mefford, Hearing on the "Oversight of the American Recovery and Reinvestment Act," United States House of Representatives Committee on Energy and Commerce, Subcommittee on Communications, Technology, and the Internet, p. 11. (April 2, 2009). Available at: http://connectednation.com/in_the_news/testimonies_and_presentations/Mefford,%20Brian%20Testimony%20and%20Appendix_House%20Sub_04022009.pdf.